In the High Court of Uttaranchal at Nainital.

Criminal Appeal No.587 of 2001

Old No. 237 of 1989

1- Maharaj Mandal S/o Manik Mandal
R/o village Kali Nagar P.S. Dineshpur District
Nainital.

2- Ganesh Sarkar S/o Brindraban Singh,
R/o village Kali Nagar P.S. Dineshpur
District Nainital ……Appellants.

Vs.

State of U.P. …..Respondent.

Hon'ble Irshad Hussain, J.

Heard Sri Rajesh Joshi learned counsel for the appellants and Sri A. Rub learned Additional Government Advocate.

2- This is an appeal against the impugned order dated 15.12.1988 passed by the II Additional Sessions Judge, Nainital under section 446 of the Code of Criminal Procedure whereby the sureties of the accused Mahendra Singh were penalized in view of the fact that the said accused was not produced by the surety-appellants in court.

3- From perusal of the order dated 15.12.1988 it is evident that the surety-appellants brought it to the notice of the court that accused Mahendra Singh had fled away from the jail before he could be released on bail on the basis of the bonds furnished by the appellants-sureties. The view taken by the learned Sessions Judge was that once a contract was entered in to between the State and the sureties to the effect that on their surety bonds the accused is to be released on bail, the sureties are liable to be penalized in case the accused fled away from the jail. The learned Sessions Judge lost sight of the fact that the release order was not yet executed after acceptance of the surety bonds of the sureties and by the time the said accused Mahendra Singh fled away from jail he had not executed his own personal bond as was required to do so in the bail granted in his favour. Unless and until the accused had executed a personal bond as is required by the bail order the contract was not complete and the sureties could not have been saddled with the responsibility to pay the amount of surety bonds on account of the accused having been fled away from the jail

before the release order could be sent there. The order thus passed by the learned Sessions Judge is unjust and illegal and the same is liable to be set aside.

4- The appeal is accordingly allowed and the impugned order dated 15.12.1988 is set aside. The Sureties-appellants Ganesh Sarkar and Maharaj Mandal (deceased) whose surety bonds were forfeited are entitled to be paid back the amount of the surety bonds which they had deposited in compliance of the said order. The amount deposited by these two sureties was Rs. 1500/- each and in view of the order dated 15.12.1988 having been set aside the surety appellant Ganesh Sarkar shall be refunded Rs. 1500/- whereas the legal administrators/legal heirs of Maharaj Mandal shall be refunded the deposited amount of Rs. 1500/- after verification by the learned Sessions Judge, Nainital.

(Irshad Hussain, J.)

Dated: 17-5-2004

ISB